



L. JOYCE HAMPERS
COMMISSIONER

The Commonwealth of Massachusetts

Department of Revenue

Lowell Saltonstall Building,

100 Cambridge Street, Boston 02204

November 4, 1982

operates a job training program at the ("Association")
Job Corps Center
("Job Corps Center") on behalf of the United States Secretary
of Labor. You inquire whether the Massachusetts sales or use
tax applies to the Association's purchases of tangible personal
property attributable to operation of the Job Corps Center.

The Association is an organization exempt from federal
income taxation under Section 501(c)(6) of the Internal Revenue
Code; it was not organized for profit and no part of its net
earnings inures to the benefit of any private shareholder or
individual. Title to property purchased by the Association in
the conduct of the job training program passes to the United
States, either upon delivery by the vendor or thereafter.

General Laws Chapter 64H, Section 6(d) exempts from
taxation sales to the United States, the Commonwealth of
Massachusetts or any political subdivision thereof, or their
respective agencies. A purchaser is an "agency" for purposes
of this provision only if it is a regularly constituted depart-
ment of government or an entity wholly owned by the government
and exercising exclusively governmental functions. First
Agricultural National Bank v. State Tax Commission, 353 Mass.
172 (1967) (reversed on other grounds, 392 U.S. 339 (1968)).

General Laws Chapter 64H, Section 6(a) exempts sales
which the Commonwealth is prohibited from taxing under the
Constitution or laws of the United States.

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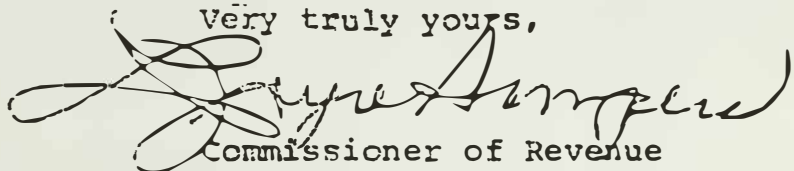
Under the United States Constitution, immunity from state taxation is appropriate only when a levy falls on the United States itself, or on an agency or instrumentality so closely connected to the federal government that the two cannot realistically be viewed as separate entities, as far as the activity being taxed is concerned; it is not relevant to the determination of immunity that a contractor is purchasing property for the federal government, or that the federal government shoulders the entire economic burden of the tax. United States v. New Mexico, ___ U.S. ___, 102 S. Ct. 1373 (1982).

29 U.S.C. s. 939(c) (Supp. IV 1981) provides that:

"[t]ransactions conducted by private for-profit contractors for Job Corps centers which they are operating on behalf of the Secretary [of Labor] shall not be considered as generating gross receipts."

Based on the foregoing, it is ruled that the Association's purchases of tangible personal property attributable to operation of the Job Corps Center are subject to the sales or use tax.

Very truly yours,



Commissioner of Revenue

LJH:JXD:mf

LR 82-107